

Frequently Asked Questions on preferential issue of units by Infrastructure Investment Trusts (“InvITs”)

Disclaimer: These FAQs are prepared with a view to guide market participants on SEBI (Infrastructure Investment Trusts) Regulations, 2014 (“InvIT Regulations”). For full particulars of laws governing the Infrastructure Investment Trusts (InvITs), please refer to the Acts/Regulations/Guidelines/Circulars etc. appearing under the Legal Framework Section of SEBI website i.e. www.sebi.gov.in. Any queries about the InvIT Regulations can be addressed to the Department of Debt and Hybrid Securities, SEBI.

1. What is “preferential issue” of units?

“Preferential issue” means an issue of units by a listed InvIT to any select person or group of persons on a private placement basis and does not include an offer of units made through a public issue, rights issue, bonus issue, qualified institutions placement.

2. What are the conditions to be satisfied for preferential issue of units by an InvIT?

An InvIT is permitted to raise funds through an preferential offer of units provided that –

- a) resolution by existing unitholders has been passed with requisite majority as specified under the relevant circular
- b) units of the same class which are proposed to be allotted have been listed on a stock exchange for a period of at least six months prior to the date of issuance of notice for unit holders’ meeting to pass the resolution for approval of the preferential issue
- c) in-principle approval has been obtained from the stock exchange for listing of the units
- d) it is in compliance with applicable conditions for continuous listing and disclosure obligations
- e) none of the respective promoters or partners or directors of the sponsor(s) or investment manager or trustee of the InvIT is a ‘fugitive economic offender’

3. What is the 'relevant date' in case of preferential issue of units?

In case of preferential issue, the pricing norms are prescribed based on *inter alia* the price of units in the period preceding the relevant date.

The date thirty days prior to the date on which the meeting of unitholders is held to consider the preferential issue, is considered to be the relevant date.

Where the relevant date falls on a weekend or a holiday, the day preceding the weekend or the holiday is considered to be the relevant date.

4. Who can participate in a preferential issue of units by an InvIT?

Any person is permitted to participate in a preferential issue of units by an InvIT. However, units cannot be allotted to any person who has sold or transferred any units of the InvIT during the 90 trading days preceding the relevant date.

In case any sponsor(s) has sold/transferred any units of the InvIT during the 90 trading days preceding the relevant date, all the sponsor(s) shall be ineligible for allotment of units in preferential issue.

However, the restriction on preferential issue of units is not applicable for sponsor(s) in case asset(s) is being acquired from the sponsor(s) and preferential issue of units is being made to that particular sponsor(s) as full consideration for acquisition of such asset.

For example,

- The InvIT has two sponsors, namely, Sponsor A and Sponsor B..
- Sponsor A sells certain of its existing units in the InvIT on March 31, 2022.
- The meeting of the unitholders is held on May 01, 2022. Accordingly, both sponsors are restricted from participating in any preferential issue of units undertaken by the InvIT where the date of the sale (March 31, 2022) falls within a period of 90 trading days prior to the relevant date for the preferential issue of units.
- However, if the preferential issue is proposed to be undertaken to acquire an asset from Sponsor A (say where the value of Sponsor A's asset is INR 100) and the entire consideration of INR 100 is to be discharged by issuing units to Sponsor A through a preferential issue, then the restriction of 90 days shall not apply and the InvIT can issue units to Sponsor A through this preferential issue.

5. Is there any limit on the number of investors who can participate in a preferential issue?

Offer and allotment through private placement (including a preferential issue) cannot be made to more than 200 investors (excluding institutional investors) in a financial year.

6. What shall be the minimum allotment and trading lot for units issued in preferential issue of units?

The minimum allotment and trading lot for units shall be equivalent to the minimum allotment and trading lot as applicable to the units of the InvIT already listed on stock exchanges in terms of Regulation 14 of the InvIT Regulations

7. Whether there is any requirement to file any offer document/notice with SEBI for preferential issue of units?

There is no requirement of filing any offer document / notice with SEBI in case of preferential issue of units.

8. Whether there is any requirement to seek in-principle approval from stock exchange?

Yes, the issuer i.e. InvIT is required to seek in-principle approval from the stock exchange(s) for listing of units issued through the preferential issue.

9. What disclosures are required to be made in the notice for general meeting proposed for passing the resolution for preferential issue?

The issuer is required to make appropriate disclosures in the notice for general meeting proposed for passing the unit holders' resolution for preferential issue including the following:

- a) Objects of the preferential issue
- b) NAV of the InvIT
- c) Maximum number of units to be issued
- d) Intent of the parties to the InvIT, their directors or key managerial personnel to subscribe to the issue
- e) Unitholding pattern of the InvIT before and after the preferential issue

- f) Time frame within which the preferential issue shall be completed
- g) Identity of the natural persons who are ultimate beneficial owners of the units proposed to be allotted and/or who ultimately control the proposed allottees in the manner set out in the relevant SEBI circular

10. What are frequently traded units?

In case of preferential issue of units, the pricing norms are prescribed based on whether the units of the InvIT are frequently traded or not.

If the traded turnover of the units of the InvIT on any recognised stock exchange during 240 days preceding the relevant date is at least ten percent of the total number of issued and outstanding units of the relevant class of units of InvIT, the units of the InvIT are considered frequently traded units.

Further, where the number of issued and outstanding units of the InvIT is not identical throughout such period, the weighted average number of total units of the InvIT represent the total number of units.

11. What are the provisions regarding pricing of units in a preferential issue?

The pricing norms for preferential issue of units is based on whether the units of the InvIT are frequently traded or not.

Pricing of frequently traded units

Where the units of the InvIT are frequently traded, the price of units to be allotted pursuant to the preferential issue shall not be less than higher of the following:

- i. the 90 trading days' volume weighted average price of the related units quoted on the recognised stock exchange preceding the relevant date; or
- ii. the 10 trading days' volume weighted average prices of the related units quoted on a recognised stock exchange preceding the relevant date.

The relevant stock exchange means the stock exchange with highest trading volume in respect of the units of the InvIT during the preceding 90 trading days prior to the relevant date.

Pricing of infrequently traded units

If the units of an InvIT are not frequently traded, the price determined by the InvIT shall take into account the NAV of the InvIT based on a full valuation of all existing InvIT assets conducted in terms of InvIT Regulations and the SEBI Circular dated November 27, 2019.

12. What are the lock-in requirements for units allotted in preferential issue?

There are separate lock-in requirements for units allotted to sponsor(s) (including its associates) and other persons.

Lock-in of units allotted to persons other than sponsor(s) and its associates

The units allotted to persons other than sponsor(s) and its associates shall be locked-in for a period of one year from the date of trading approval for such units. Further, the entire pre-preferential issue unit holding of the allottees shall be locked-in for a period of 6 months from the date of trading approval.

Lock-in of units allotted to sponsor(s) and its associates

The units allotted to sponsor(s) and its associates are locked-in for a period of three years from the date of trading approval for such units.

Provided that not more than twenty-five percent of the total unit capital of the InvIT held by the sponsor(s) shall be locked-in for three years. Units allotted in excess of such percentage shall be locked-in for one year from the date of trading approval.

Further, the entire pre-preferential issue unit holding of the allottees shall be locked-in for a period of 6 months from the date of trading approval.

Illustration for computation of lock-in requirements

Illustration 1:

Date of listing of units issued via initial offer	01-01-2020
Total unit capital post initial offer	1000
Units allotted to sponsor in initial offer	400
of which units locked-in for three years (till 31-12-2022)	150
units locked for one year (till 31-12-2020)	250
Total units issued via preferential issue	300
of which units allotted to sponsor	200
units allotted to persons other than sponsor	100

Date of trading approval for units issued via preferential issue	01-02-2021
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Calculation for lock-in for units allotted to sponsor

Total post issue unit capital (after the preferential issue)	1300
Units allotted to sponsor in preferential issue	200
Units locked-in for 3 years in terms of InvIT Regulation in the past	150
25% of total post issue unit capital	$0.25*1300=325$
Units to be locked-in for 3 years	$325-150=175$
Units to be locked-in for 1 year	$200-175=25$

Post issue the following lock-in shall exist for sponsor (as on 02-02-2021)

Units locked-in till 31-07-2021	250
Units locked-in till 31-01-2022	25
Units locked-in till 31-12-2022	150
Units locked in till 31-01-2024	175

Illustration 2:

Date of listing of units issued via initial offer	01-01-2020
Total unit capital post initial offer	1000
Units allotted to sponsor in initial offer	400
of which units locked-in for three years (till 31-12-2022)	150
units locked for one year (till 31-12-2020)	250
Total units issued via preferential issue	300
of which units allotted to sponsor	200
units allotted to persons other than sponsor	100
Date of trading approval for units issued via preferential issue	01-02-2024

Calculation for lock-in for units allotted to sponsor

Total post issue unit capital	1300
Units allotted to sponsor in preferential issue	200
Units locked-in for 3 years in terms of the InvIT Regulation in the past and now free of lock-in	150
25% of total post issue unit capital	$0.25*1300=325$
Units to be locked-in for 3 years	175
Units to be locked-in for 1 year	25

Post issue the following lock-in shall exist for sponsor (as on 02-02-2021)

Units locked-in till 31-07-2024	400
Units locked-in till 31-01-2025	25
Units locked in till 31-01-2027	175

13. What is the time period for allotment of units in preferential issue?

Allotment pursuant to the unit holders' resolution is required to be completed within fifteen days from the date of passing of such resolution, provided that in case the approval of any regulatory, governmental or statutory body / agency is required, then in such cases the period of fifteen days will commence from the date of approval from such regulatory, governmental or statutory body/agency.

In case the allotment is not made within prescribed timelines, the money received is required to be refunded to the investors within twenty days from the date of resolution.

In case the refund is not made within prescribed timelines, interest is required to be paid to the investor at a rate of fifteen percent per annum from the date of expiry of the fifteen-day period.

14. What is the time period for listing after allotment of units in preferential issue?

The units are required to be listed within two working days from the date of allotment.

In case the listing is not done within prescribed timelines, the money received is required to be refunded to the investors within four working days from the date of allotment.

In case the refund is not made within prescribed timelines, interest is required to be paid to the investor at a rate of fifteen percent per annum.

15. How can investors redress their complaints against InvITs issuing units or any other intermediaries involved in the allotment of InvIT units?

SEBI has a web based centralized grievance redress system called SEBI Complaint Redress System (SCORES) available at <http://scores.gov.in> where

investors can lodge their complaints against InvITs or any other intermediaries involved in the allotment of InvIT units

Investors should first approach the concerned registrars and unit transfer agents or issuers/InvITs with their complaint. If the complaint remains unresolved, the investors may approach SEBI SCORES for facilitating redressal of their complaints.